Calendar No. 568

97TH CONGRESS, 2d Session } SENATE { REPORT No. 97-400

SMALL BUSINESS VENTURE CAPITAL ACT OF 1982

MAY 18 (legislative day, MAY 11), 1982.—Ordered to be printed

Mr. WEICKER, from the Committee on Small Business, submitted the following

REPORT

[To accompany S. 2408]

The Committee on Small Business, to which was referred the bill (S. 2408) to amend the Small Business Act and the Small Business Investment Act of 1958, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title, and recommends that the bill, as amended, do pass.

I. LEGISLATIVE HISTORY

S. 2408, the "Small Business Venture Capital Act of 1982", was introduced by Senator Lowell Weicker, Jr., for himself and Senator Nunn, on April 21, 1982, and referred to this Committee.

This bill proposes amendments which would increase the program ceiling for Small Business Investment Companies (SBIC's) from $160 million to $225 million for fiscal years 1982–1984; increase the program ceiling for Minority Enterprise Small Business Investment Companies (MESBIC's) from $35 million to $41 million for fiscal years 1982–1984; and increase the program ceiling for the Economic Opportunity Loan (EOL) program from $60 million to $70 million for fiscal years 1982–1984. In addition, the bill proposes to expand the SBA Inspector General's statutory audit cycle of SBIC's and MESBIC's from at least once annually to at least once every two years.

Two other related bills were also referred to the Small Business Committee. One bill, S. 2060, was introduced on February 3, 1982, by Senator Nunn. That bill would increase the program levels for the Minority Enterprise Small Business Investment Company (MESBIC)

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program from the current law level of $35 million to $45 million in fiscal years 1982 and 1983.

A second bill, S. 2409, was introduced on April 21, 1982, by Senator Weicker, by request of the Administration. That bill would increase the program ceiling for the MESBIC program from $35 million to $41 million in fiscal years 1982 and 1983. In addition, the bill would raise the program level for the Economic Opportunity Loan program from the current law level of $60 million in guarantee authority to $100 million in fiscal year 1982, and to $167 million in fiscal year 1983.

On May 13, 1982, the Committee met to consider these bills. With a quorum present, the Committee agreed to favorably report S. 2408 from Committee with an amendment in the nature of a substitute, and an amendment to the title by a roll call vote of 17 to 0.

The Committee amendment, as reported is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. This Act may be cited as the "Small Business Venture Capital Act of 1982".

SBA PROGRAM LEVELS

SEC. 2. Section 20 of the Small Business Act is amended as follows:

(a) by striking from paragraph 2 of subsection (k) the figure "$60,000,000" and inserting in lieu thereof "$70,000,000";

(b) by striking from paragraph 3 of subsection (k) the figure "$35,000,000" and inserting in lieu thereof "$41,000,000", and by striking the figure "$160,000,000" and inserting in lieu thereof "$225,000,000";

(c) by striking from paragraph 2 of subsection (n) the figure "$60,000,000" and inserting in lieu thereof "$70,000,000";

(d) by striking from paragraph 3 of subsection (n) the figure "$35,000,000" and inserting in lieu thereof "$41,000,000", and by striking the figure "$160,000,000" and inserting in lieu thereof "$225,000,000";

(e) by striking from paragraph 2 of subsection (q) the figure "$60,000,000" and inserting in lieu thereof "$70,000,000"; and

(f) by striking from paragraph 3 of subsection (q) the figure "$35,000,000" and inserting in lieu thereof "$41,000,000", and by striking the figure "$160,000,000" and inserting in lieu thereof "$225,000,000".

SMALL BUSINESS INVESTMENT COMPANY PROGRAM

SEC. 3. Section 310(b) of the Small Business Investment Act of 1958 is amended by striking from the second sentence "each year" and inserting in lieu thereof "every two years".

SURETY BOND GUARANTEE AUDITS

SEC. 4. Section 411(e) of the Small Business Investment Act of 1958 is amended by striking "$1,000,000." and inserting in lieu thereof "$1,000,000, or

"(3) the surety has breached a material term or condition of such guarantee or agreement, or

"(4) the surety has substantially violated the regulations promulgated by the administration pursuant to subsection (d).".

TECHNICAL AMENDMENTS

SEC. 5. (a) Section 2(c)(1) of the Small Business Act is amended by striking "7(i)" and inserting in lieu thereof "7(a)(11)".

(b) Paragraphs (1), (2), (3), (8), (9), and (11) of section 7(j) of the Small Business Act are amended by striking "7(i)" each time it appears and inserting in lieu thereof "7(a)(11)".

(c) Section 7(k) of the Small Business Act is amended by striking "7(i)" and inserting in lieu thereof "7(a)(11)".

SEC. 6. Sections 7 (e), (h), (i), and (l) of the Small Business Act are repealed.

SEC. 7. (a) Section 3(a) of the Small Business Act is amended by inserting after the comma following the word "industries" in the first sentence the phrase "hereinafter referred to as agricultural enterprises,".

(b) Section 3(h) of the Small Business Act is amended to read as follows:

"(h) For purposes of this Act, the term "credit elsewhere" means the availability of sufficient credit from non-federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.".

(c) Section 18(b) of the Small Business Act is repealed.

(d) Section 18(a) of the Small Business Act is amended by striking "(a)".

(e) The amendments made by this section shall not apply to any disaster which commenced on or before July 2, 1980.

SEC. 8. Section 7(c)(4) of the Small Business Act is amended by striking all after subparagraph (D), and inserting in lieu thereof the following:

"Such loans, subject to the reductions required by subparagraphs (A) and (B) of section 7(b)(1), shall be in amounts equal to 100 percent of loss if the applicant is a homeowner and 85 percent of loss if the applicant is a business or otherwise. The interest rates for loans made under sections 7(b) (1) and (2), as determined pursuant to this paragraph (4), shall be the rate of interest which is in effect on the date the disaster commenced: *Provided*, That no loan under sections 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under section 7(b) would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.".

POLLUTION CONTROL

SEC. 9. (a) Section 102 of the Small Business Investment Act of 1958 is amended by inserting "(a)" after the section number, and adding at the end thereof the following:

"(b) With respect to the program authorized by sections 404 and 405 of this Act, it is the declared policy of the Congress that the guarantee of payments for use of pollution control facilities would not cause the interest on bonds to finance such facilities to be included in the gross income of the bondholders".

(b) Section 404(b)(1) of the Small Business Investment Act of 1958 is amended by striking the phrase "the guarantee authorized in the case of pollution control facilities or property may be issued" and inserting in lieu thereof "and subject only to the existence of qualified guarantee applications of eligible small business concerns and within the authority available to the Administration, the Administration shall not decline to issue the guarantee authorized in the case of pollution control facilities or property".

(c)(1) Section 20(k)(6) of the Small Business Act is amended by striking the phrase "the Administration is authorized to enter into guarantees" and inserting in lieu thereof "and subject only to the existence of qualified guarantee applications of eligible small business concerns, the Administration shall enter into guarantees of not less than $150,000,000 and".

(2) Section 20(n)(6) of the Small Business Act is amended to read as follows:

"(6) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, subject only to the existence of qualified guarantee applications of eligible small business concerns, the Administration shall—

"(A) with respect to such applications filed after September 30, 1982 and before October 1, 1983, enter into guarantees aggregating not less than $150,000,000 and not more than $250,000,000, and

"(B) with respect to such applications pending on September 30, 1982, enter into guarantees aggregating—

"(i) not less than the excess of—

"(I) $150,000,000, over

"(II) the amount of guarantees entered into during fiscal year 1982 under such programs, and

"(ii) not more than the excess of—

"(I) $250,000,000, over

"(II) the amount described in clause (i)(II)".

(3) Section 20(q)(6) of the Small Business Act is amended by striking the phrase "the Administration is authorized to enter into guarantees" and inserting in lieu thereof "and subject to the existence of qualified guarantee applications of eligible small business concerns, the Administration shall enter into guarantees of not less than $175,000,000 and".

(d) The amendments made by this Section shall apply to applications for the issuance of a guarantee pending on January 1, 1982, or received after December 31, 1981.

PROGRAM GUARANTEE AUTHORITY

SEC. 10. Section 20(a) of the Small Business Act is amended—

(a) by inserting after "20(a)" the figure "(1)"; and

(b) by adding at the end thereof the following:

"(2) Notwithstanding any other provision of law, the Administration shall enter into commitments to guarantee loans, debentures, payment of rentals or other amounts due under qualified contracts and other types of financial assistance and to enter into commitments to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958 in the full amounts provided by law subject to (1) the availability of qualified applications for such guarantees, and (2) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Administration to reduce or limit its authority to enter commitments for such guaranees to qualified applicants.".

Amend the title so as to read: "A bill to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.".

II. COMMITTEE CONSIDERATION

On February 23, 1982 the Committee held a hearing on the Small Business Administration's budget for fiscal year 1983. Of particular concern to the Committee were the across-the-board proposed cuts in the guaranteed lending programs. The guaranteed loan programs have proven to be a major source of new jobs and economic revitalization. (See table.)

SMALL BUSINESS ADMINISTRATION LOAN GUARANTEE AUTHORITY

[In millions of dollars]

	Statutory program levels (Public Law 97-35)	Administration, Nov. 5, 1981 credit reductions	Resulting administrative program level	Feb. 8, 1982 supplemental program level request
Business loan and investment fund	3,300	−465	2,835	2,735
Handicapped	(5)	0	(5)	(5)
Economic opportunity	(60)	(−10)	(50)	(100)
Energy	(17)	(−2)	(15)	(15)
Development company	(250)	(−100)	(150)	(150)
Investment company	(160)	0	1(60)	(125)
General business loans	(2,808)	(−353)	(2,455)	(2,305)
Surety bond revolving fund	1,400	−320	1,080	1,080
Pollution control bond revolving fund	250	−200	50	150
Total guarantee authority	4,950	−985	3,965	3,965

A. SBIC'S AND MESBIC'S

Testimony at the hearing supported a continuation of the guaranteed lending programs levels at the 1982 authorization levels. In the case of Small Business Investment Companies (SBIC's) and Minority Enterprise Small Business Investment Companies (MESBIC's) in particular, testimony supported a real need to increase their program funding levels to insure that the industry remains viable.

SBIC's and MESBIC's are SBA-licensed companies which, through a unique private and public sector partnership, provide equity capital, long-term loans and management assistance to small business concerns and to small business concerns owned by socially or economically disadvantaged persons. By combining business expertise, management assistance and venture capital, SBIC's and MESBIC's, in compliance with SBA rules and regulations, assist small and minority small business concerns to survive, grow and prosper at times when other traditional lending institutions have turned their backs on them. In this respect, they are valuable economic development tools.

In return for a commitment to invest in small businesses, SBIC's are licensed by SBA and authorized to issue a debenture which is guaranteed by the Federal Government at the full cost of money to the Treasury, plus a premium; MESBIC's, which go through the same licensing procedure, obtain leverage capital from the government through the purchases of preferred securities in the MESBIC itself. To be currently licensed as an SBIC or MESBIC, the company must first have a minimum of $500,000 in private sector, paid-in capital. Before an SBIC can leverage any funds, it must have first committed at least 60 percent of its own capital to investments in small business concerns. In addition, MESBIC's no longer are eligible to receive an automatic "first tier" of funding from the Small Business Administration; regulations currently require a MESBIC to first demonstrate a specific need before the MESBIC is able to obtain Federal leverage funds.

The testimony highlighted the likely request and need for refunding of debentures maturing in fiscal years 1982, 1983 and 1984. In addition, the testimony was clear that without an increase in the guarantee program level for the SBIC program, companies which fully qualify for additional leveraging would be completely frozen out from the program.

Among the witnesses who testified at the February 23, 1982 hearing, were Walter Stults, president of the National Association of Small Business Investment Companies (NASBIC), and Patrick Owen Burns, a member of the Board of Directors, and legislative chairman, of the American Association of MESBIC's. Their respective testimony focused on the performance record of their industry and the budgetary needs of the SBIC and MESBIC industry for fiscal year 1983, and beyond.

The Committee learned of two recent cost-benefit studies on the SBIC industry prepared by the accounting firm of Deloitte, Haskins and Sells. These studies demonstrate the very positive impact this industry has had on the economy as a whole, and on the small business community in particular. The first study revealed that of the $4 million spent by the Federal Government on the SBIC program in 1979, half was for the cost of administering the program, while the other half was used to cover SBA's losses on loans to SBIC's. In return for that $4 million, however, the government received a total of $440 million from increased taxes paid by SBIC's, their portfolio companies, and their employees—a 1 to 110 cost-benefit-ratio. The second phase of the Deloitte, Haskins and Sells 1981 study analyzed the cost of creating a job through the SBIC program. It found that the cost to the Federal Government of each permanent job created in private businesses was a mere $270.

The Committee also received testimony at this same hearing concerning the benefits of the MESBIC program. In 1980, the full $42 million authorized and appropriated for the MESBIC programs was invested in minority businesses. This minimal Federal share generated an additional $84 million of private financing. Of this total $126 million, only $22 million represented leverage funds from SBA, providing a cost-benefit ratio of almost 1 to 6. When tax receipts, the potential for reduced unemployment costs, and other relevant factors are taken into consideration, the final cost-benefit ratio to the government is almost 1 to 40.

It was clear from the testimony that even a continuation of the $160 million of the current statutorily established funding level for fiscal year 1983 for the SBIC program, let alone the Administration's proposed reduction to a $125 million program level, would seriously threaten the survival of the program. Walter Stults related the problem as follows:

> In fiscal 1983, about $155 million of SBIC leverage will mature. Again we would expect that most of that is held by active licensees that do not have liquid funds—all their dollars are out working in small business. Unless it is increased, SBA will not be able to roll over some $30 million in maturing leverage. If the SBICs involved are illiquid, the result will be default on repayments, leading to bankruptcy and liquidation.
>
> Our study of the industry indicates that SBICs could effectively utilize at least $200 million in *new* leverage in both fiscal 1982 and 1983. SBA will be able to lend us only $100 million in added leverage this year and *nothing at all in fiscal 1983.* [Emphasis supplied.]

The program level of $225 million provided in S. 2408 for guarantees of debentures could provide qualified SBIC's with a leverage funds potential of approximately $130 million in fiscal year 1982. At the same time, this level could provide approximately $95 million for use for SBIC's applying to SBA for a refunding of maturing debentures. According to the information made available to the Committee by the Small Business Administration, this $95 million would provide more than sufficient authority to meet the anticipated SBIC's refunding needs.

Without this increase in the program ceiling, however, many SBIC's would be forced to liquidate their small business portfolio investments in order to repay their maturing debentures; other licensed SBIC's which meet the statutory and regulatory requirements would be unable to obtain any new leverage to continue their proven efforts to assist the small business community with needed access to affordable capital.

In addition, the bill increases the program ceiling for MESBIC's from $35 million under current law to $41 million for each of fiscal years 1982, 1983, and 1984. This action is identical to the President's recommendation to increase the MESBIC funding level in order to ensure that they continue to provide needed venture capital to minority firms.

The Committee recognizes, however, that the SBIC and MESBIC programs are not without some problems. As with any government program that involves a substantial amount of capital, there will always be those few who attempt to operate outside the legislative and

regulatory framework, and threaten to ruin the program for the legitimate and active participants. Problems have been raised by the industry, by the Small Business Administration's Investment Division, and by the Congress, and highlighted by the SBA Inspector General in an extensive management advisory, and semi-annual, reports. The SBIC and MESBIC programs have suffered in recent years from both regulatory abuses at the borrowing end, and, on occasion, outright fraud. In some cases, these abuses have been compounded by a laxity of enforcement in the agency.

The Committee places great emphasis on its oversight responsibility and is greatly concerned by these problems. However, the Committee also recognizes that the Small Business Administration is already taking steps to see that the potential for abuse is minimized.

During the past year, SBA has undertaken several initiatives to improve the management of the program and eliminate regulatory violations. In March 1981, SBA imposed a 90-day moratorium on licensing of new companies while the agency worked to gain stronger management control of companies already licensed to participate in the program. In July 1981, SBA issued a new regulation requiring MESBIC's to demonstrate a financial need before providing a loan to, or investing in, a minority-controlled small business. Previously, only the economic or social disadvantage of the company was considered. Earlier this year, SBA issued new regulations to ensure upgraded managerial experience requirements for officers of newly-licensed companies.

As has been noted, SBA is preparing to issue new, tougher regulations for the program. And so there can be no doubt, this Committee and the SBA will work together to assure that these regulations are fair and enforceable, and that the abuses of the past do not reoccur.

After a lengthy Committee staff review, Chairman Weicker announced that the Committee will conduct public hearings on both the benefits of, and problems in, the SBIC program to determine whether corrective legislation for the SBIC program needs to be included in this legislation prior to action by the full Committee. But that impending hearing does not diminish the Committee's view of the need for an increase in the program ceiling for these programs at this time.

B. ECONOMIC OPPORTUNITY LOAN PROGRAM

This program is designed to assist in the establishment or preservation of firms located in urban or rural areas with high proportions of unemployed or low income individuals.

Under legislation proposed by the Administration, the program ceiling for guarantees of economic opportunity loans would be increased in fiscal year 1982 from $60 million to $100 million, and in fiscal year 1983 from $60 million to $167 million.

Under statute, the maximum interest rate financial institutions are permitted to charge borrowers for SBA-guaranteed loans with maturities of less than 7 years is 2¼ percent over prime; for loans with maturities of 7 years or more, the maximum rate is 2¾ percent over prime.

Actual guarantee commitments entered into by the Small Business Administration in the Economic Opportunity Loan program in fiscal year 1981 totalled only $20.4 million. However, at that time, the agency

still had available a direct loan program to assist eligible borrowers. Even with the Administration's proposal to eliminate the direct loan program in fiscal year 1983 and beyond, with the continuation of high interest rates, it is unlikely that total program commitments for guarantees under this program would exceed the levels provided for in the Committee's amended version of S. 2408.

C. INSPECTOR GENERAL MANDATORY AUDIT CYCLE OF SBIC'S AND MESBIC'S

Under current law, the SBA Inspector General is required to audit each licensed SBIC and MESBIC at least once each year; his staff currently conducts approximately 500 annual examinations with the 25 auditors available for the SBIC and MESBIC program. In his last semiannual report, the Inspector General pointed out that during the past six years, because of a substantial increase in the commitment of government funds to SBIC's and MESBIC's, and the increased financial sophistication of the investments made in portfolio companies, his audit resources have been severely strained by the need to audit annually both active and idle companies, and to audit those without regulatory violations as well as those with chronic regulatory control problems.

S. 2408 amends the current law mandate of annual SBIC and MESBIC audits to provide that examinations shall be conducted not less than every two years. This would permit the Inspector General greater flexibility in expending his limited audit resources in the examination of less financially sound SBIC's, or those with a history of regulatory violations. This amendment will also permit the Inspector General to devote resources in a more effective and timely manner to other critical program audits. To date, these reviews have been subordinated from time to time to the annual licensee examination requirement of the Small Business Investment Act.

However, while the Committee amendment increases the discretion of the Inspector General to assign his audit resources where he determines necessary, the Committee would expect that the Inspector General would be mindful of the oversight needs of the program division.

D. COMMITTEE AMENDMENTS

In addition to the provisions originally contained in S. 2408, as introduced, the Committee further amended the bill.

On March 11, 1982, the Senate Small Business Committee held a hearing on abuses found in SBA's Surety Bond Guarantee Program. The Committee found that although this program has assisted thousands of small and minority business owners who could not otherwise have obtained surety bonds, the program has been susceptible to fraud and abuse, potentially costing the government millions of dollars in losses. In addition, SBA has mismanaged the program by approving bonds without adequate documentation of need or capability, and paying losses without verification. SBA has relied almost entirely on the Specialty Surety Companies and their agents to run the program, without imposing adequate checks and balances on its day-to-day operation.

According to the SBA Inspector General, because of this "delegation of virtually all discretion" to the Specialty Surety Companies,

a few of these companies which write the "lion's share of the bonds" have taken advantage of the program.

At the Committee hearing, the Small Business Administration acknowledged the problems the Committee found in the program and its operation. SBA testified about remedial regulatory actions it had already taken to resolve these problems, and discussed additional regulatory and programatic actions that will be taken to insure that the abuses committed in the past would be stopped.

Among its recommendations, SBA proposed an amendment to the statutory authority for the surety bond guarantee program contained in the Small Business Investment Act of 1958. The proposal would give the agency greater latitude to deny liability in claims where the surety company is in material breach of its contractual obligations with SBA.

Existing section 411(e) of the Small Business Investment Act, adopted in 1978, states clearly that SBA will be relieved of liability on a surety bond in only two instances:

(1) When the surety obtained the guarantee, or applied for reimbursement, by fraud or material misrepresentation; or

(2) When the total contract at the time of execution of the bond exceeds $1,000,000.

SBA testified that, in their view, the conference report explaining Congressional intent in the adoption of this provision was unnecessarily restrictive, and tied the Agency's hands even when there was a material breach of the contract by the surety.

SBA expressed concern that the agency may be precluded from denying liability for any reason but the two presently enumerated in the statute.

Accordingly, the agency recommended legislation that would permit the denial of claims in two additional instances:

(1) When the surety has breached a material term or condition of the surety bond guarantee or agreement; and

(2) When the surety has substantially violated the regulations established by SBA.

The Committee agreed that SBA should have the authority to deny claims when there is a material breach of the surety bond quarantee or agreement of a substantial violation of the agency's regulations. While it is arguable that other provisions in the surety bond statutory authority permit the agency to fully accomplish their recommended action, the agency's recommendations have been adopted to make clear SBA's authority to deny liability in these additional instances:

2. Pollution Control Equipment Contract Guarantee Program.

Senators Hayakawa, D'Amato and Tsongas offered an amendment dealing with SBA's Pollution Control Equipment Contract Guarantee Program.

Their amendment to the Small Business Investment Act of 1958 insures that SBA, subject only to the existence of qualified contracts, will enter into pollution control equipment contract guarantees of not less than $150 million for each of fiscal years 1982 and 1983 and not less than $175 million for fiscal year 1984. It also insures that SBA will not decline to issue guarantees on contracts financed through the use of tax exempt industrial revenue bonds. Furthermore, the amendment includes a carryover provision so that qualified applications pending on

September 30, 1982, will be carried over and funded in fiscal year 1983, in the same manner and under the same funding levels as if they were funded in fiscal year 1982, if there is insufficient time to fund these applications in fiscal year 1982. This amendment also contains a provision which provides that the amendment shall apply to applications pending as of January 1, 1982, or received after December 31, 1981.

By amendments in 1976 to the Small Business Investment Act of 1958, Congress authorized the Small Business Administration to guarantee 100 percent of the payments due from eligible small businesses under qualified contracts for the planning, design, financing or installation of pollution control facilities or equipment mandated by governmental pollution control regulations. Contract financing is normally obtained from the proceeds of the sale of tax exempt bonds issued by state or municipal authorities.

By using tax-exempt, SBA-guaranteed, pollution control revenue bonds, SBA cooperates with commercial and investment banks and local and state authorities to provide access to long-term, low-interest financing available to eligible small businesses in the same manner that large corporations obtain financing for pollution facilities.

The Committee has extensively reviewed the benefits of this program. A May 1981 oversight hearing, and testimony received by the Committee at its February 23, 1982 review of the President's fiscal year 1983 budget, reconfirmed that this is one of the most successful Small Business Administration programs.

Since the 1976 initiative, there has not been a single loss in the program. The initial $15 million capital contribution to the Pollution Control Bond Revolving Fund has more than doubled through both fees charged for guarantees, and agency investments of idle funds.

The Congress has recognized the sound financial basis for this program, as well as the crucial gap it fills in making financing available to eligible small businesses for mandated, non-productive, pollution control equipment. For example, in the Omnibus Reconciliation Act (P.L. 97–35), the Congress increased the maximum guarantee level for this program to $250 million. During the Senate's consideration of the fiscal year 1982 Commerce, Justice Appropriations Act (H.R. 4619), the Senate agreed to an amendment offered by Senators Hayakawa and Levin to establish minimum commitments for this program.

However, in January 1982, the Small Business Administration announced that, for the balance of fiscal year 1982, and for fiscal year 1983, the Agency would limit its guarantee commitments to $150 million. In addition, the Agency announced that none of the guarantee authority would be used for guaranteeing contracts financed with tax-exempt financing vehicles.

By supporting this proposal, the Committee is restating its support for an adequate fiscal years 1982 and 1983 program level for the Pollution Control Bond program, and permits a modest growth in the minimum level in Fiscal Year 1984.

The Committee has consistently viewed the continued availability of the guarantee of contracts financed with tax-exempt financing instruments to be equally important. Repeated testimony of small businesses, bankers, underwriters, and state pollution control financing agencies overwhelmingly demonstrates the importance of small businesses' continued access to this small, but crucial source of guarantee authority. The adoption by the Committee of this amendment is a reaffirmation of

the Committee's judgement that it is sound public and fiscal policy to continue to permit small businesses which are forced to install non-productive pollution control equipment access to this important (and often only) source of capital.

Furthermore, currently three staff manage the Pollution Control Guarantee program. It is the Committee's view that this staffing would be inadequate to process and close qualified pollution control bond applications at the minimum dollar levels of $150 million in fiscal years 1982 and 1983, and $175 million in fiscal year 1984, as provided in the Committee's amendment. It is the Committee's expectation that the Small Business Administration will commit sufficient, qualified staff to this program to insure that the Congressionally-mandated levels can be, and are, achieved in each of these fiscal years.

3. Program Guarantee Authority.

Senator Levin offered, and the Committee adopted, an amendment to establish minimum program authority for the Small Business Administration's guaranteed programs. The amendment provides that the Small Business Administration shall enter into commitments to guarantee loans, debentures and other types of financial assistance in the full amounts provided by law, subject only to the availability of qualified applications, and limitations contained in appropriations Act.

The Committee, by the adoption of this amendment, specifically prohibits SBA from administratively reducing commitments to guarantee established in law. Reductions would be effective only if the Congress subsequently approves, through appropriate action, recommendations for reductions submitted to the proper Committees by the Executive branch.

Under this amendment, the Small Business Administration shall continue to enter into commitments to guarantee applications only with applicants who are qualified under the statutory authority establishing such guarantee program and the Administration's implementing rules and regulations.

This amendment also provides that the Small Business Administration will enter into commitments to guarantee in the full amounts provided by law, further subject only to limitations contained in appropriation Acts.

On November 5, 1981, the Reagan Administration announced a unilateral reduction of previously authorized new federal loan guarantee commitments for fiscal year 1982 by $20.3 billion. For the Small Business Administration, this announcement reduced the Business Loan Investment Fund (BLIF) to $2.835 billion from $3.3 billion; the Surety Bond Guarantee Program to $1.080 billion from $1.4 billion; and the Pollution Control Bond Guarantee Program to $50 million from $250 million. This overall reduction in the Small Business Administration's loan guarantee authority of $985 million is almost twenty percent of the $5 billion in loan guarantee authority provided to the Small Business Administration by Congress in the Omnibus Reconciliation Act of 1981.

While the Committee recognizes the Administration's legitimate concern over the impact of federal credit activities on the Nation's financial markets, the Committee cannot accept unilateral administrative reductions in Small Business Administration or other guarantee program levels enacted by Congress. To allow administrative reduc-

tions of Small Business Administration loan guarantee authority would negate the priorities this Committee, the Congress, and the President have previously jointly established in law for the Small Business Administration.

Moreover, to allow these reductions to remain in effect through administrative action only would disregard the actions which this Committee initially took to set guarantee program levels for the Small Business Administration, and the actions of the Appropriations Committees to support these levels.

It is, of course, not the Committee's intent that the SBA be required to enter into commitments where guarantee authority is not being utilized because of an absence of applicants, or where applicants do not fully qualify for such assistance.

4. Technical Amendments.

The Committee adopted an amendment offered by Senator Weicker making technical and conforming changes in the Small Business Act. These provisions were necessary to correct omissions and errors of cross-reference in the Small Business Act contained in the Omnibus Reconciliation Act of 1981 (P.L. 97–35).

The Committee amendment amends the Small Business Act in several places. In the Omnibus Reconciliation Act (Public Law 97–35) Congress consolidated all of the Small Business Administration's lending programs into a single section of the Small Business Act. The former Economic Opportunity Loan program, which was carried out under the authority of section 7(i) of the Small Business Act, was consolidated by that statute into a new section 7(a)(11) provision. However, the reconciliation law failed to make conforming changes to other sections of the Small Business Act which made reference to that program. This amendment corrects the cross-references to the consolidated program only.

The amendment repeals four outdated sections of the Small Business Act. Section 7(e), which provides trade adjustment assistance loans, is repealed; that program authority has never been used. Section 7(h), which provides authority to make or guarantee loans to handicapped individuals, is repealed; that authority is now duplicated in section 7(a)(10). Section 7(i), which provides authority to make or guarantee "economic opportunity" loans, is repealed; that authority is now duplicated in section 7(a)(11). Section 7(l), which provides authority to make or guarantee energy generation and conservation loans, is repealed; that authority is now duplicated is section 7(a)(12).

Subsection 7(a) of the Committee amendment amends the definitions section of the Small Business Act to provide that the term "agricultural enterprises", as currently defined in this section, is the controlling definition for purposes of the Act.

Subsection 7(b) of the Committee amendment amends the definition of "credit elsewhere" used in the Small Business Act. Current law has two separate definitions of "credit elsewhere". One definition was included in section 18 of the Small Business Act by P.L. 96–302 (July 2, 1980). A second, but slightly different definition, was enacted in P.L. 97–35 (August 13, 1981) and included in section 3 of the Small Business Act. This amendment conforms the two definitions.

Subsections 7 (c) and (d) of the Committee amendment are conforming amendments. With the inclusion of the revised definition

of "credit elsewhere" as provided by subsection 7(b), and the clarification of the definition of "agricultural enterprise" as provided in subsection 7(a), section 18(b) of the Small Business Act becomes redundant. Subsection 7(c) repeals section 18(b). Subsection 7(d) makes a conforming amendment to section 18 of the Small Business Act.

Subsection 7(e) of the Committee amendment provides that the amendments made by this section shall not apply to any disaster which commenced on or before July 2, 1980. On July 2, 1980, with the enactment of Public Law 96–302, Congress made significant changes in the eligibility of small business farmers for SBA disaster loan assistance. It was the Congressional intent that those legislative subsection is to insure that the technical changes being made by this changes would be prospectively applied only. The purpose of this subsection is to insure that the technical changes being made by this section would have no bearing on the prior eligibility of farm disaster loan recipients, and provides no new independent authority or basis for the agency to review those prior applicants.

Further, the Committee amendment amends section 7(c)(4) of the Small Business Act, relating to the terms and conditions of disaster loan assistance. This paragraph was added by amendments made in the Omnibus Reconciliation Act, Public Law 97–35. However, internal references to the Small Business Act were not explicit in their description, and created a technical ambiguity for SBA disaster counsel. The amendment, while lengthy, is merely an identical restatement of the language adopted in Public Law 97–35, with the exception of the cross-references.

Matters Required To Be Discussed Under Senate Rules

A. REGULATORY IMPACT

In compliance with Rule XXVI(11)(b) of the Standing Rules of the Senate, it is the Committee's belief that S. 2408 will have no regulatory or privacy impact on the small businesses affected by the legislation.

In fact, the one provision of the bill that deals with audits of SBIC's and MESBIC's could decrease the paperwork requirements of small businesses participating in these programs.

B. ESTIMATED COST

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 17, 1982.

Hon. Lowell P. Weicker, Jr.,
Chairman, Committee on Small Business, U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2408, the Small Business Venture Capital Act of 1982, as ordered reported by the Senate Committee on Small Business, May 13, 1982.

S. 2408 would make a number of changes in the programs administered by the Small Business Administration (SBA), none of which is expected to have a significant cost impact. The bill would increase the program ceilings for each of the fiscal years 1982, 1983, and 1984 for investment company loans from $160 million to $225 million; minority capital ownership development loans from $35 million to $41 million; and economic opportunity loans from $60 million to $70 million. However, the bill provides no increases in the 1982, 1983, or 1984 authorization levels in current law for the business loan and investment fund, which administers these programs. As a result, it is likely that this change will simply provide more flexibility in setting loan levels.

S. 2408 would also require that SBA provide loans at the program levels specified in the appropriation bill, unless a lack of qualified applicants exists. It would prohibit the Administration from denying guarantees for the pollution control program solely because tax exempt revenue bonds are involved in financing these activities. Since January 1982 when the Administration established this policy, SBA has approved few guarantees in this program because most applicants also use this type of financing.

S. 2408 would also expand the grounds for denying liability for guarantees made under the surety bond program, and make a number of technical corrections to the Small Business Act to conform with the Omnibus Reconciliation Act.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

C. COMMITTEE VOTES

In compliance with rule XXVI (7)(C) of the Standing Rules of the Senate, the following roll call votes were recorded:

On the amendment by Mr. Levin to establish program level authority for the Small Business Administration's guaranteed program:

YEAS (13)	NAYS (4)
WEICKER	PACKWOOD
HAYAKAWA	HATCH*
GORTON*	BOSCHWITZ
RUDMAN	NICKLES
D'AMATO	
NUNN	
HUDDLESTON	
BUMPERS*	
SASSER*	
BAUCUS*	
LEVIN	
TSONGAS*	
DIXON	

*By proxy.

With a quorum present, the Committee, by a roll call vote of 17 Yeas, ordered S. 2408 favorably reported with amendment in the nature of a substitute and amendment to the title.

On motion of Mr. Weicker to favorably report the "Small Business Venture Capital Act of 1982" with an amendment in the nature of a substitute and an amendment to the title:

YEAS	NAYS
WEICKER	
PACKWOOD*	
HATCH*	
HAYAKAWA	
BOSCHWITZ	
GORTON*	
NICKLES	
RUDMAN	
D'AMATO	
NUNN	
HUDDLESTON	
BUMPERS*	
SASSER*	
BAUCUS*	
LEVIN	
TSONGAS*	
DIXON	

*By proxy.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that this Act may be cited as the "Small Business Venture Capital Act of 1982".

Section 2(a) increases the fiscal year 1982 guarantee program level for the Economic Opportunity Loan program from $60,000,000 to $70,000,000.

Section 2(b) increases the fiscal year 1982 program levels for the MESBIC program from $35,000,000 to $41,000,000 and for the SBIC program from $160,000,000 to $225,000,000.

Section 2(c) increases the fiscal year 1983 guarantee program level for the Economic Opportunity Loan program from $60,000,000 to $70,000,000.

Section 2(d) increases the fiscal year 1983 program levels for the MESBIC program from $35,000,000 to $41,000,000 and for the SBIC program from $160,000,000 to $225,000,000.

Section 2(e) increases the fiscal year 1984 guarantee program level for the Economic Opportunity Loan program from $60,000,000 to $70,000,000.

Section 2(f) increases the fiscal year 1984 program levels for the MESBIC program from $35,00,000 to $41,000,000 and for the SBIC program from $160,000,000 to $225,000,000.

Section 3 changes the Inspector General's mandatory audit cycle of SBIC's and MESBIC's from "at least once each year" to "at least once every two years".

Section 4 expands the statutory criteria under which the SBA may deny liability for the payment of claims submitted by surety companies under the Surety Bond Guarantee program to include instances where the surety has breached a material term or condition of the surety bond guarantee or agreement, or where the surety has substantially violated the regulations established by SBA for this program.

Section 5 of the Committee amendment provides technical amendments to the Small Business Act to correct omissions from the Omnibus Reconciliation Act of 1981 (P.L. 97–35).

Section 6 of the Committee amendment repeals four outdated sections of the Small Business Act. The authority contained in these sections have been consolidated, by the Omnibus Reconciliation Act of 1981 (P.L. 97–35), into a new section of the Small Business Act.

Section 7 of the Committee amendment makes further technical changes to existing law, necessitated, in part, by amendments made in the Omnibus Reconciliation Act of 1981 (P.L. 97–35).

Section 8 of the Committee amendment is a technical amendment to correct internal cross-references only to a disaster assistance provision enacted in the Omnibus Reconciliation Act of 1981 (P.L. 97–35).

Section 9 of the Committee amendment takes two amendments to the Small Business Investment Act of 1958 relating to the authority of the Small Business Administration to operate the Pollution Control Bond guarantee program. In addition, the amendment amends section 20 of the Small Business Act, relating to the program levels for guarantees of qualified contracts, to establish minimum program levels for several fiscal years. In addition, the amendment includes a "carryover" provision from fiscal year 1982 into fiscal year 1983 for qualified contracts which, because of budgetary limitations, cannot be committed or closed in fiscal year 1982.

Section 10 of the Committee amendment requires that the Small Business Administration shall enter into commitments to guarantee loans, debentures and other types of financial assistance in the full amounts provided for by law, subject only to (1) the availability of qualified applicants for such guarantees, and (2) limitations contained in appropriation Acts.

D. Change in Existing Law

In compliance with rule XXVI(12) of the Standing Rules of the Senate, changes in existing law made by the statutory provisions of the bill are as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, and existing law in which no change is proposed is shown in roman):

Small Business Act

* * * * * * *

Sec. 2. * * *

(c)(1) The assistance programs authorized by sections [7(i)] *7(a)11* and 7(j) of this Act are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

* * * * * * *

Sec. 3. (a) For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock,

aquaculture, and all other farming and agricultural related industries, *hereinafter referred to as agricultural enterprises*, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition may use these criteria, among others: Numbers of employees and dollar volume of business: *Provided*, That the Administration shall not promulgate, amend, or rescind any rule regulation with respect to size standards prior to March 31, 1981. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

* * * * * * *

(h) For purposes of this Act, the term "credit elsewhere" means the availability of *sufficient* credit from non-Federal sources [on] *at* reasonable *rates and* terms, [and conditions] taking into consideration [the] prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.

* * * * * * *

SEC. 7. * * *

(C) (4) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum;

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans

and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act. Loans under this subparagraph shall be limited to a maximum term of three years.

Such loans, subject to the reductions required by subparagraphs (A) and (B) of [paragraph] *section 7(b)(1)*, shall be in amounts equal to 100 percent of loss if the applicant is a homeowner and 85 percent of loss if the applicant is a business or otherwise. The interest rates for loans made under [paragraphs] *section 7(b)* (1) and (2), as determined pursuant to this paragraph (4), shall be the rate of interest which is in effect on the date the disaster commenced: *Provided*, That no loan under [paragraphs] *sections 7(b)* (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under *section 7(b)* [this subsection] would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.

* * * * * * *

[(e) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any firm to adjust to changed economic conditions resulting from increased competition from imported articles, but only if (1) an adjustment proposal of such firm has been certified by the Secretary of Commerce pursuant to the Trade Expansion Act of 1962, (2) the Secretary has referred such proposal to the Administration under that Act and the loan would provide part or all of the financial assistance necessary to carry out such proposal, and (3) the Secretary's certification is in force at the time the Administration makes the loan. With respect to loans made under this subsection the Administration shall apply the provisions of sections 314, 315, 316, 318, 319, and 320 of the Trade Expansion Act of 1962 as though such loans had been made under section 314 of that Act.]

* * * * * * *

[(h)(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

[(A) to assist any public or private organization—

[(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

[(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

[(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it re-

ceives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services; or

[(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

[(2) The Administration's share of any loan made under this subsection shall not exceed $350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1)(B) of this Act would exceed $350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however*, That any reasonable doubt shall be resolved in favor of the applicant.

[(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

[(i)(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 2(b) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however*, That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed $100,000. The Administration may defer payments on the principal of such loans for grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by Administration: *Provided, however*, That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

[(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

[(3) To insure an equitable distribution between urban and rural areas for loans between $3,500 and $100,000 made under this subsection the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended, as it shall determine necessary.

[(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 10(a) of this Act.

[(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations—

[(A) there is reasonable assurance of repayment of the loan;

[(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

[(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

[(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however*, That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3108 et seq.) shall not exceed the rate currently applicable to new loans made under section 201 of that Act (42 U.S.C. 3141); and

[(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

[(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are alloted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

[(7) No financial assistance shall be extended pursuant to this subsection where the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.]

(j)(1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals

or enterprises eligible for assistance under sections *7(a)(11)* [7(i)], 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) The furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections *7(a)(11)* [7(i)], 7(j)(10), and 8(a) of this Act;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

(E) the furnishing of business counseling, management training programs using emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections [7(i)] *7(a)(11)*, 7(j), and 8(a) of this Act—

(A) An advisory committee composed of five high-level officers from five United States businesses and five representatives of minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The Chairman of the advisory committee, who shall be designated by the President shall report annually to the President and to the Congress on the activities of the advisory committee.

(B) The General Accounting Office shall evaluate the activities taken by the Administration to achieve the purpose of this paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The General Accounting Office shall report to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph.

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of

small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(8) The General Accounting Office shall provide for an independent and continuing evaluation of programs under sections *7(a)(11)* [7(i)], 7(j) and 8(a) of this Act, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General.

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections *7(a)(11)* [7(i)], 7(j), and 8(a) of this Act.

(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The program, and all other services and activities authorized under section 7(j) and 8(a) of this Act, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) The program shall—

(i) assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals for correcting the impairment of such concern's ability to compete, as determined for such concern pursuant to section 8(a)(6) of this Act, within a fixed period of time as mutually agreed upon by the applicant and the Administrator prior to acceptance in such program: *Provided*, That not less than one year prior to the expiration of such period, and upon the request of such concern, the Administration shall review such period and may extend such period as necessary and appropriate: *Provided further*, That no determination made under this paragraph shall be considered a denial of total participation for the purposes of section 8(a)(9) of the Act;

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financial counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in Program; and

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958.

(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

(C) No small business concern shall receive a contract pursuant to section 8(a) of this Act unless—

(i) the business plan required pursuant to section 7(j)(10)(A)(i) is approved by the Administration; and

(ii) the program is able to provide such concern with, but not limited to, such management, technical and financial services as may be necessary to achieve the targets, objectives, and goals of such business.

(11) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal Assistance to small business concerns eligible for assistance under section *7(a)(11)* [7(i)] of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act.

* * * * * * *

[(1)(l) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administrator may determine to be necessary or appropriate to assist any small business concern in financing plant construction, conversion, expansion (including acquisition of land for such a plant), or startup, and the acquisition of equipment, facilities, machinery, supplies, or materials to enable such concern to design architec-

turally or engineer, manufacture, distribute, market, install, or service any of the following energy measures:

[(A) Solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types.

[(B) Photovoltaic cells and related equipment.

[(C) A product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures List of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection.

[(D) Equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy.

[(E) Equipment the primary purpose of which is industrial cogeneration of energy, district heating, production of energy from industrial waste.

[(F) Hydroelectric power equipment.

[(G) Wind energy conversion equipment.

[(H) Engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in subparagraph (A) through (G).

Proceeds of loans under this subsection shall not be used primarily for research and development.

[(2) No loan shall be made under this subsection if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed $500,000. No loan made or effected under this subsection directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000.

[(3) No financial assistance shall be extended pursuant to this subsection unless the financial assistance applied for is not otherwise available on reasonable terms from non-Federal sources.

[(4) No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no loan may be made unless it is shown that a participation is not available.

[(5) In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

[(6) The Administration's share of any loan made under this subsection shall bear interest at the same rate as loans made under subsection (a) of this section. The maximum terms of any such loan, including extensions and renewals, may not exceed fifteen years.

[(7) All loans made under this subsection shall be of such sound value as reasonably to assure repayment, recognizing that greater risk may be associated with loans made to business concerns in this field:

Provided, That factors in determining "sound value" shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further*, That such status need not be as sound as that required for loans under subsection (a) of this section.

[(8)(A) The Administration, after consultation with the Department of Energy and other Federal departments and agencies as the Administrator deems appropriate, shall publish in the Federal Register for public comment not later than sixty days after the date of enactment of this subsection proposed regulations to carry out the provisions of this subsection. The Administration shall make all reasonable efforts to solicit comments from small businesses and shall take into consideration comments submitted regarding such proposed regulations.

[(B) The administration shall publish final regulations under this subsection not later than one hundred and eighty days after the date of enactment of this subsection.

[(9) It is the intent of Congress that the paperwork burden and regulatory impact on applicants under this subsection shall be minimized, and that to the maximum extent practicable, the Administrator may rely upon consultation with the Department of Energy and other agencies, upon paid consultants, and upon voluntary public submissions of information to obtain market data, industry sales projections, energy savings, and other economic information needed to carry out the provisions of section 7(1)(l)(D) and (E). Nothing in this subsection shall be construed as precluding the Administrator from using any of his lawful powers to obtain information from applicants.]

* * * * * * *

SEC. 18. [(a)] The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government, except to those enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries: *Provided*, That prior to October 1, 1983, an agricultural enterprise shall not be eligible for loan assistance under paragraph (1) of section 7(b) to repair or replace property other than residences and/or personal property unless it is declined for, or would be declined for, emergency loan assistance at substantially similar interest rates from the Farmers Home Administration under subchapter III of the Consolidated Farm and Rural Development Act, and nothing contained in this Act shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this Act. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

[(b) As used in this Act—

[(1) "agricultural enterprises" means those businesses engaged in the production of food and fiber, ranching, and raising of live-

stock, aquaculture, and all other farming and agricultural related industries; and

[(2) "credit elsewhere" means the availability of sufficient credit from non-Federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.]

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SEC. 20. (a)(*1*) For fiscal years 1981, 1982, 1983 and 1984 there are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than those for which appropriations are specifically authorized. For fiscal years 1985 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than those for which appropriations are specifically authorized. All appropriations whether specifically or generally authorized shall remain available until expended.

(2) Notwithstanding any other provision of law, the Administration shall enter into commitments to guarantee loans, debentures, payment of rentals or other amounts due under qualified contracts and other types of financial assistance and to enter into commitments to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958 in the full amounts provided by law subject only to (1) the availability of qualified applications for such guarantees, and (2) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Administration to reduce or limit its authority to enter commitments for such guarantees to qualified applicants.

SEC. 2. * * *

(k)(2) For the program authorized by 7(a) of this Act, and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), [$60,000,000] *$70,000,000* in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $250,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make [$35,000,000] *$41,000,000* in direct purchase of debentures and preferred securities and to make [$160,000,000] *$225,000,000* in guarantees of debentures.

* * * * * * *

(n)(2) For the programs authorized by section 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), [$60,000,000] *$70,000,000* in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $350,-

000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make [$35,000,000] *$41,000,000* in direct purchases of debentures and preferred securities and to make [$160,000,000] *$225,000,000* in guarantees of debentures.

* * * * * * *

(q) (2) For the programs authorized by 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), [$60,000,000] *$70,000,000* in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $350,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

(3) For the program authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make [$35,000,000] *$41,000,000* in direct purchases of debentures and preferred securities and to make [$160,000,000] *$225,000,000* in guarantees of debentures.

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SMALL BUSINESS INVESTMENT ACT OF 1958

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SEC. 102. (*a*) It is declared to be the policy of the Congress and the purpose of this Act to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply: *Provided, however*, That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources.

It is the intention of the Congress that the provisions of this Act shall be so administered that any financial assistance provided hereunder shall not result in a substantial increase of unemployment in any area of the country.

(b) With respect to the program authorized by sections 404 and 405 of this Act, it is the declared policy of the Congress that the guarantee of payments for use of pollution control facilities would not cause the interest on bonds to finance such facilities to be included in the gross income of the bondholders.

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SEC. 310. * * *

(b) Each small business investment company shall be subject to examinations made by direction of the Administration by examiners selected or approved by the Administration, and the cost of such examinations, including the compensation of the examiners, may in the dis-

cretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Each such company shall be examined at least once *every two years* [each year], except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership. Every such company shall make such reports to the Administration at such times and in such forms as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 to the extent necessary to avoid duplication in reporting requirements.

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SEC. 404. * * *

(b) (1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, *and subject only to the existence of qualified guarantee applications of eligible small business concerns and within the authority available to the Administration, the Administration shall not decline to issue the guarantee authorized in the case of pollution control facilities or property* when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax.

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SEC. 411. * * *

(e) (1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation, or

(2) the total contract amount at the time of execution of the bond or bonds exceeds $1,000,000[.], *or*

(3) the surety has breached a material term or condition of such guarantee or agreement, or

(4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).

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